

**IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS**

PEACE OF MIND HOME HEALTH)
CARE, INC. a/k/a PEACE OF MIND, INC.)
Plaintiff,) CIV. A. NO. 12-CV-10064-WGY
vs.)
PEACE OF MIND HOMECARE, INC.,)
GODADDY.COM, INC., PEACE OF MIND)
SENIOR LIVING MANAGEMENT, INC.,)
OCALA WEBSITE DESIGNS LLC a/k/a)
BLAIR THOMAS, BLUEHOST, INC. a/k/a)
FASTDOMAIN, INC., PEACE OF MIND)
CAREGIVERS, INC., YELL ADWORKS,)
INC., AT&T SERVICES, INC., YELLOW)
BOOK USA, INC. and,)
PEACE OF MIND SENIOR HOME CARE)
Defendants.)

)

**FIRST AMENDED COMPLAINT FOR TRADEMARK INFRINGEMENT AND
VIOLATION OF THE LANHAM ACT**

Plaintiff Peace Of Mind Home Health Care, Inc. (“POM, Inc.”), by its attorneys, files this Complaint against defendants, alleging as follows:

JURISDICTION AND VENUE

1. This action arises under the Lanham Trademark Act 15 U.S.C. §§ 1051 et seq. (the “Lanham Act”). Accordingly, this Court has federal question jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121, and 28 U.S.C. §§ 1338(a) and (b).
2. Venue in this district is proper under 28 U.S.C. § 1391.

PARTIES

3. Plaintiff is a corporation with its principal place of business in Boston, Jamaica Plain, Massachusetts and does business under the tradenames PEACE OF MIND, PEACE OF MIND HOMECARE, PEACE OF MIND HOME HEALTHCARE and PEACE OF MIND, INC. (hereinafter “the PEACE OF MIND Marks” or “Marks”).

4. Plaintiff is the owner of:

- (a) United States Trademark Registration No. 3,859,940 for the word mark PEACE OF MIND, and,
- (b) United States Trademark Registration No. 3,029,738 for the word and logo mark PEACE OF MIND.

hereinafter collectively referred to as the “Registered Marks.”

5. Defendant, Peace Of Mind Homecare, Inc., is, on information and belief, a privately held company having a principal place of business in Warwick, Rhode Island and is actively conducting business and advertising, promoting and/or providing its services under an infringing mark (including PEACE OF MIND Homecare) by way of an infringing domain name and an infringing website to persons who reside in this District.

6. Defendant, GoDaddy.com, Inc. (“GoDaddy”) is a corporation with a principal office address at 14455 N. Hayden Road, Suite 226, Scottsdale, Arizona 85260 doing business generally in this District and specifically in this District promoting and selling infringing domain names and its services for maintaining infringing domain names. Said defendant is the “Registrar” that issued and controls the use of the Defendant’s Peace of Mind Homecare, Inc.’s infringing domain name, www.apeaceofmindhomecareinc.com. Godaddy intentionally registers domain names that are confusingly similar to plaintiff’s marks for the purpose of profiting and exploiting web surfers’ confusion by selling advertising for those confusingly similar websites.

7. Defendant, Peace Of Mind Senior Living Management, Inc. is, on information and belief, a privately held company having a principal place of business in Wilton Manors, Florida and is actively conducting business and advertising, promoting and/or providing its services under an infringing mark (including PEACE OF MIND Senior Living Management) to persons who reside in this District and who at one time was responsible for creating, registering and maintaining an infringing website, www.peaceofmindfl.com.

8. Defendant Peace Of Mind Caregivers, Inc. is, on information and belief, a privately held company having a principal place of business at 520 SE Fort King Street, Suite B-1, Ocala, Fl 34471 and is actively conducting business and advertising, promoting and/or providing its services under an infringing mark (including PEACE OF MIND CAREGIVERS) to persons who reside in this District and was responsible for registering and maintaining an infringing website and domain name, www.peaceofmindcaregiverss.com.

9. Defendant, Ocala Website Designs LLC a/k/a Blair Thomas is a corporation having a principal office address at 800 SE 171st Court Road, Silver Springs, Florida 34488. Said defendant together with defendant, Peace of Mind Caregivers, Inc. is actively conducting business and advertising, promoting and/or providing services under an infringing mark (including PEACE OF MIND and PEACE OF MIND CAREGIVERS) to persons who reside in this District via a website (www.peaceofmindcaregivers.com/) that was registered by and created, operated and maintained by both of said defendants.

10. Defendant, Bluehost, Inc. a/k/a FastDomain, Inc. is a corporation having a principal office address at 1958 South 950 East, Provo, Utah 84604 and is doing business generally in this District and specifically in this District by promoting and selling infringing domain names and by publishing and maintaining and assisting the defendant service-provider, Peace Of Mind

Caregivers, Inc. in publishing and maintaining an infringing website. One or both of said defendants is believed to be both the “Registrar” that issued and controls the use of the defendant’s Peace of Mind Caregiver Inc.’s infringing domain name, www.peaceofmindcaregivers.com, and is also the “host” of the infringing website. Bluehost, Inc and/or Fastdomain, Inc. intentionally registers domain names that are confusingly similar to plaintiff’s marks for the purpose of profiting and exploiting web surfers’ confusion by selling advertising for those confusingly similar websites.

11. Defendant, Yell Adworks, Inc. a/k/a Yellow Book USA, Inc. or Yellow Book, Inc. is a corporation having a principal office address at 2201 Renaissance Boulevard, 3rd Floor, King of Prussia, PA 19406 and a service of process address at C.T. Corporation System, 155 Federal Street, Suite 700, Boston, MA 02110. Defendant, Peace Of Mind Senior Home Care is a privately held business entity having a principal office address at 239-542-6463, 3306 SW 15th Avenue, Cape Coral, FL 33914. Both of said defendants are believed to be actively conducting business and advertising, promoting and/or providing services under an infringing mark (including PEACE OF MIND and PEACE OF MIND SENIOR HOME CARE) to persons who reside in this District via an infringing website that they registered or caused to be registered under an infringing domain name (www.peaceofmindseniorcareservice.com) that was and is created, operated and maintained by said defendants.

12. Defendant, AT&T Services, Inc. a/k/a Yellow Book USA, Inc.. is a corporation having a resident agent for service of process address at C.T. Corporation System, 155 Federal Street, Suite 700, Boston, MA 02110 and is doing business generally in this District and specifically in this District by promoting and selling infringing domain names and by publishing and maintaining and assisting the defendant service-provider, Peace Of Mind Senior Care Service

in publishing and maintaining an infringing website. Said defendant is believed to be the "host" of the infringing website, www.peaceofmindseniorcareservice.com.

BACKGROUND OF THE ACTION

13. Since at least about 1994 to the present, Plaintiff is and has been engaged in supplying healthcare, homecare and other healthcare related services as set forth in the aforesaid registrations to the elderly, infirm, disabled and sick. During this entire period, Plaintiff has continuously and extensively used its PEACE OF MIND marks both in word and logo format in connection with the sale, advertising, promotion and provision of its aforesaid services.

14. At one or more times during this same period of time from 2004 to the present, Plaintiff has continuously, consistently and at great expense used the PEACE OF MIND marks and the Registered Marks in advertising and promotional materials, on letterhead, in newspapers, display banners posted at trade shows, on flyers and brochures, on tags and labels applied to goods, in magazine advertisements and on POM, Inc.'s website.

15. At one or more times during this same period of time from 2004 to the present, Plaintiff has invested hundreds of thousands of dollars in the design, development, advertising and promotion of its PEACE OF MIND brand name as a source of high quality, new and innovative services. Plaintiff annually realizes substantial revenues from the sale and provision of its PEACE OF MIND brand services. The success of Plaintiff's sales of PEACE OF MIND brand services has steadily increased from year to year. In the present year, 2011, Plaintiff will have provided PEACE OF MIND brand services at a value of over \$4,000,000.

16. Plaintiff's PEACE OF MIND brand services have achieved and will continue to achieve wide renown among healthcare providers and prospective healthcare receivers including senior citizens, the elderly, disabled, sick and infirm. The PEACE OF MIND Marks and the

Registered marks have been used in interstate commerce on and for the purpose of identifying, among other things, Plaintiff as the source of such services and the quality of services that Plaintiff provides.

17. As a result of the foregoing, Plaintiff's PEACE OF MIND brand marks are famous and the PEACE OF MIND marks have developed and now possess secondary and distinctive meaning to consumers and users of Plaintiff's services advertised and provided under the PEACE OF MIND Marks and the Registered Marks.

DEFENDANTS' UNLAWFUL CONDUCT

18. On information and belief, the Defendants, Peace of Mind Home Care, Inc., Peace Of Mind Senior Living Management, Inc., Peace Of Mind Senior Home Care and Peace Of Mind Caregivers, Inc. (hereinafter the "Provider-Defendants") have adopted and are using the name/designations PEACE OF MIND alone or in conjunction with other words in promotion and/or advertising of identical or nearly identical services that compete directly with Plaintiff's services and marks in the identical customer base or market to which Defendants' services are advertised, promoted, sold or provided. On information and belief, Defendants are presently using Plaintiff's PEACE OF MIND marks and Registered Marks on and in connection with websites created and operated by said Provider-Defendants, in verbal answering of their listed business phones, on letterhead and in print advertising and promotional materials.

19. On information and belief the defendants GoDaddy.com, Inc., AT&T Services, Inc., Yell Adworks, Inc., Yellow Book USA, Inc., Bluehost, Inc. and FastDomain, Inc. are actively assisting one or the other of the Provider-Defendants in operating, hosting, maintaining and

enabling the use of the above-stated infringing domain names and websites that advertise and promote the Provider-Defendants' health care services.

20. Further, on information and belief, the Provider-Defendants intend to expand their use of the name PEACE OF MIND to use on labels, tags, packaging, advertising, letterhead, on business cards, on signage, on their websites and in verbal answering of telephone inquiries in connection with their identical or nearly services.

21. Plaintiff has in the past received misdirected communications from prospective customers of the Provider-Defendant's, Peace of Mind Home Care's services who have been confused into believing that said defendant or defendant's services are Plaintiff or are Plaintiff's services. On information and belief, the Provider-Defendants have received misdirected communications and inquiries from prospective customers of Plaintiff's services who have been confused into believing that Defendants or their services are or originate with Plaintiff.

22. Prior to adopting and using the term PEACE OF MIND, the Defendants had actual knowledge of Plaintiff's PEACE OF MIND Marks and Registered Marks and Plaintiff's prior usage of the PEACE OF MIND Marks and Registered Marks.

23. The aforesaid acts by all of the defendants are causing and are likely to continue causing the purchasing public to believe that the Provider-Defendant(s) is/are Plaintiff or is/are somehow connected or affiliated with Plaintiff, or that the Provider-Defendants' services are authorized, sponsored or approved by Plaintiff such that the Provider-Defendants' services are subject to the same high quality standards as Plaintiff's services despite the fact that this is not true.

24. The aforesaid unlawful and willful adoption and use of the PEACE OF MIND Marks and Registered Marks by Defendants constitute an infringement of Plaintiff's servicemarks

and a false designation of the source of origin of the Provider-Defendants' services and falsely describes and represents such services. The use, publication and maintenance by all of the defendants of the Plaintiff's PEACE OF MIND Marks and Registered Marks on, in or in connection with the offending websites also constitutes an attempt to palm off and appropriate to themselves Plaintiff's exclusive rights in the PEACE OF MIND Marks and Registered Marks. Such acts will cause dilution of Plaintiff's marks.

25. Upon information and belief, the defendants have and will continue to engage in such unauthorized activities in this State, in Rhode Island, in Florida and elsewhere in interstate commerce and are likely to continue such activities, to the great injury of Plaintiff.

26. Plaintiff has no adequate remedy at law and will suffer irreparable harm and damage as a result of the aforesaid acts, in an amount presently incalculable.

FIRST CAUSE OF ACTION
AGAINST ALL DEFENDANTS EXCEPT GODADDY.COM, INC.
(Registered Trademark Infringement 15 U.S.C Sec. 1114(a))

27. Plaintiff repeats and re-alleges each allegation set forth in paragraphs 1-26 above.

28. Defendants' aforesaid conduct constitutes willful infringement of Plaintiff's Registered Marks in violation of 15 U.S.C. 1114(a). Plaintiff is suffering and will continue to suffer great harm and monetary damage in an amount as yet undetermined but believed to be in excess of \$2,000,000 for the upcoming year, unless and until Defendants are enjoined from continuing to engage in their unlawful conduct.

SECOND CAUSE OF ACTION
AGAINST ALL DEFENDANTS EXCEPT GODADDY.COM, INC.
(Violation of the Lanham Act, 15 U.S.C Sec. 1125(a))

29. Plaintiff repeats and re-alleges each allegation set forth in paragraphs 1-28 above.

30. Defendants' aforesaid conduct constitutes willful infringement of Plaintiff's PEACE OF MIND Marks and Registered Marks in violation of Section 43(a) of the Lanham Act, 15 U.S.C. 1125(a). Plaintiff is suffering and will continue to suffer great harm and monetary damage in an amount as yet undetermined but believed to be in excess of \$2,000,000 for the upcoming year, unless and until Defendants are enjoined from continuing to engage in their unlawful conduct.

THIRD CAUSE OF ACTION
AGAINST ALL DEFENDANTS EXCEPT GODADDY.COM, INC.
(Common Law Trade Mark Infringement and Unfair Competition)

31. Plaintiff repeats and re-alleges each allegation set forth in paragraphs 1-30 above.

32. Defendants' aforesaid conduct constitutes a willful infringement of Plaintiff's common law trademark rights in the PEACE OF MIND Marks and the Registered Marks and a violation of the Federal and State Common Law of Unfair Competition. Plaintiff is suffering and will continue to suffer great harm and monetary damage in an amount as yet undetermined but believed to be in excess of \$2,000,000 for the upcoming year, unless and until Defendants are enjoined from continuing to engage in their unlawful conduct.

FOURTH CAUSE OF ACTION
AGAINST ALL DEFENDANTS EXCEPT GODADDY.COM, INC.
(Trademark Dilution under M.G.L.A. Ch. 110H § 13)

33. Plaintiff repeats and re-alleges each allegation set forth in paragraphs 1-32 above.

34. Defendants' aforesaid unlawful conduct is diluting and will continue to dilute the strength, distinctiveness and secondary meaning in and of Plaintiff's PEACE OF MIND Marks and the Registered Marks. Such dilution constitutes a violation of M.G.L.A. Ch. 110H Section 13, which provides injunctive relief notwithstanding the absence of competition between the parties or the absence of confusion as to the source of goods or services. Plaintiff is suffering and will

continue to suffer great harm and monetary damage in an amount as yet undetermined but believed to be in excess of \$2,000,000 for the upcoming year, unless and until Defendants are enjoined from continuing to engage in their unlawful conduct.

FIFTH CAUSE OF ACTION
AGAINST ALL DEFENDANTS EXCEPT GODADDY.COM, INC.
(Trademark Dilution under the common law)

35. Plaintiff repeats and re-alleges each allegation set forth in paragraphs 1-34 above.

36. Defendants' aforesaid unlawful conduct is diluting and will continue to dilute the strength, distinctiveness and secondary meaning in and of Plaintiff's PEACE OF MIND Marks and the Registered Marks. Such dilution constitutes a violation of the common law of the United States and of the Commonwealth of Massachusetts. Plaintiff is suffering and will continue to suffer great harm and monetary damage in an amount as yet undetermined but believed to be in excess of \$2,000,000 for the upcoming year, unless and until Defendants are enjoined from continuing to engage in their unlawful conduct.

SIXTH CAUSE OF ACTION
AGAINST ALL DEFENDANTS EXCEPT GODADDY.COM, INC.
(Unfair and Deceptive Trade Practices, M.G.L. Chapter 93A)

37. Plaintiff repeats and re-alleges each allegation set forth in paragraphs 1-36 above.

38. Defendants' aforesaid unlawful conduct is and has been committed primarily and substantially within the Commonwealth of Massachusetts. Defendants are persons within the scope of Sections 2, 9 and 11 of M.G.L. Chapter 93A. Defendants' aforesaid unlawful conduct constitutes a willful unfair and deceptive trade practice in violation of M.G.L. Chapter 93A, Sections 2, 9 and 11. Plaintiff is suffering and will continue to suffer great harm and monetary damage in an amount as yet undetermined but believed to be in excess of \$2,000,000 for the

upcoming year, unless and until Defendants are enjoined from continuing to engage in their unlawful conduct.

SEVENTH CAUSE OF ACTION

AGAINST ONLY/JUST DEFENDANTS GODADDY.COM, INC.,
AND PEACE OF MIND HOME CARE, INC.

(In Rem Action Under 15 U.S.C. 1125(d) et seq. To Establish Ownership of Domain Name)

39. Plaintiff repeats and re-alleges each allegation set forth in paragraphs 1-38 above.

40. Defendant Godaddy.com, Inc. is the Registrar of the infringing domain name. Per 1125 U.S.C. §1125(d)(2)(C)(ii) documents sufficient to establish control and authority regarding the disposition of the registration and use of the infringing domain name, www.apeaceofmindhomecareinc.com, have been or are being deposited with the Court including depositing the Registration Certificate for said offending domain name with the Court.

41. Said infringing domain name, www.apeaceofmindhomecareinc.com has been registered for purposes of harming and trading on the goodwill of Plaintiff's marks. As a result of the registration of said infringing domain name, Plaintiff is suffering and will continue to suffer great harm unless and until the Registrant-Defendant Peace Of Mind Home Care, Inc. is permanently enjoined from using said domain name and the rights to use of said infringing domain name are transferred to Plaintiff.

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury on all issues so triable.

PRAAYER FOR RELIEF

WHEREFORE, plaintiff seeks relief against Defendant and all those in active concert and privity with Defendant, as follows:

1. That Defendants and all those in active concert and privity with Defendants (individually and collectively), their partners, agents, servants, employees, officers, attorneys, successors and assigns, be temporarily and preliminarily enjoined in this and all other judicial districts in the United States, during the course of this litigation and permanently from:
 - (a) providing, advertising, publishing, promoting, offering for sale or holding for sale any product or service in association or connection with the PEACE OF MIND Marks or any colorable variation or imitation thereof;
 - (b) representing to any member of the public that any service or product that is advertised, sold distributed, leased, rented, repaired, managed or held for sale by them is sponsored or authorized by Plaintiff in this district or in any other district in which Plaintiff seeks to enforce this Court's injunction order.
2. That this Court enter a preliminary and permanent injunction incorporating the terms of the Proposed order of Preliminary Injunction accompanying Plaintiff's Motion for Preliminary Injunction that includes, among other things, an order that orders the Defendants to discontinue use of the PEACE OF MIND Marks or Registered Marks in any manner including use as a domain name, on the display or content of any website and/or in metatags or metadata.
3. That this Court order the Defendants to deliver up to the Court and/or to Plaintiff all written, electronic data and printed materials bearing the Marks or any colorable imitation or variation thereof for destruction.
4. That Defendants pay to Plaintiff damages in an amount to be determined and a doubling and/or trebling thereof.

5. That Plaintiff be awarded its costs, attorneys fees and such other and further relief as the Court deems just and proper.

Dated: January 18, 2012

Respectfully submitted,
PEACE OF MIND HOME HEALTH
CARE, INC.
By Its Attorneys

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